

## SECTION VIII

### DISCLOSURE AND USE OF PROJECT INFORMATION

#### 8.1. General

Both Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Project. The Participants intend to acquire sufficient Project Information and rights to use and disclose such information to enable the development, production, and support of the AN/BYG-1 Tactical Subsystem. The nature and amount of Project Information to be acquired will be consistent with the objectives stated in Section II (Objectives) and Section III (Scope of Work). Notwithstanding any other provision in this MOU, disclosure of Project Information will be in accordance with the Participants' respective national disclosure policies. The Participants will use their best efforts to maximize disclosure of Project Information under this MOU within their national disclosure policies. Transfer of such information to Contractors will be consistent with the Participants' respective export control laws and regulations.

Understanding that the provisions of Sections 8.4. and 8.5. will apply, the Participants also intend that the US DoD will use every endeavor to obtain the disclosure of and the right for the Australian DoD to use Contractor Foreground Information and Contractor Background Information necessary to use that Contractor Foreground Information for Defense Purposes. Where the U.S. DoD is unable or unlikely to be able to negotiate to obtain such rights, then, in accordance with Section 6.4., the U.S. DoD will notify the Australian DoD prior to Contract award and the Australian DoD will be afforded every opportunity to negotiate to obtain such rights.

#### 8.2. Government Project Foreground Information

8.2.1. Disclosure: Government Project Foreground Information generated by a Participant's military or civilian employees will be disclosed without charge to both Participants.

8.2.2. Use: Each Participant may use all government Project Foreground Information without charge for Defense Purposes. The Participant generating government Project Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third

Party, will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

8.3. Government Project Background Information

8.3.1. Disclosure: Each Participant, upon request, will disclose to the other Participant any relevant government Project Background Information generated by its military or civilian employees, provided that:

8.3.1.1. such government Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining, after consultation with the other Participant, whether it is "necessary to" or "useful in" the Project;

8.3.1.2. provision of such government Project Background Information would not incur liability to holders of Intellectual Property rights; and

8.3.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and

8.3.1.4. any disclosure or transfer of such government Project Background Information to Contractors is consistent with the Participants' respective export control laws and regulations.

8.3.2. Use: Government Project Background Information furnished by one Participant to the other may be used without charge by the other Participant for Project purposes only; however, the furnishing Participant will retain all its rights with respect to such government Project Background Information. Where the use of government Project Background Information is necessary to enable a Participant to use government Project Foreground Information for Defense Purposes, and subject to the disclosure provisions of paragraph 8.3.1., the other Participant will provide that

Participant with any government Project Background Information that is necessary for the other Participant to use the government Project Foreground Information for Defense Purposes.

#### 8.4. Contractor Project Foreground Information

8.4.1. Disclosure: Contractor Project Foreground Information generated and delivered by Contractors will be disclosed without charge to both Participants.

8.4.2. Use: Each Participant may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Participant. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information, will be subject to the provisions of Section XII (Third Party Sales and Transfers) of this MOU.

#### 8.5. Contractor Project Background Information

8.5.1. Disclosure: Any relevant Contractor Project Background Information (including information subject to Intellectual Property rights) generated and delivered by Contractors will be made available to the other Participant provided the following provisions are met:

8.5.1.1. such Contractor Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining, after consultation with the other Participant, whether it is "necessary to" or "useful in" the Project;

8.5.1.2. such Contractor Project Background Information may be made available without incurring liability to holders of Intellectual Property rights; and

8.5.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and

8.5.1.4. any disclosure or transfer of such Contractor Project Background Information to Contractors is consistent with the Participants' respective export control laws and regulations.

8.5.2. Use: Contractor Project Background Information furnished by one Participant's Contractors and disclosed to the other Participant may be used without charge by the other Participant for Project purposes only, and may be subject to further restrictions by holders of Intellectual Property rights; however, the furnishing Participant will retain all its benefits with respect to such Contractor Project Background Information. Where the use of Contractor Project Background Information is necessary to enable a Participant to use Contractor Project Foreground Information for Defense Purposes, and subject to the provisions of paragraph 8.5.1., the other Participant will provide that Participant with any Contractor Project Background Information that is necessary for the other Participant to use the Contractor Project Foreground Information for Defense Purposes.

#### 8.6. Alternative Uses of Project Information

8.6.1. The prior written consent of each Participant will be required for the use of Project Foreground Information for purposes other than those provided for in this MOU.

8.6.2. Any Project Background Information provided by one Participant will be used by the other Participant only for the purposes set forth in this MOU, unless otherwise consented to in writing by the providing Participant.

#### 8.7. Project Information Subject to Intellectual Property Rights

8.7.1. Before a Participant transfers any Project Information subject to IP rights to a Contractor, the Participant will ensure that its

Contractor has entered into all necessary and appropriate arrangements (such as non disclosure agreements) directly with the Contractor or other entity that owns the Project Information or otherwise holds IP rights in that Project Information.

- 8.7.2 All Project Information subject to Intellectual Property rights will be identified and marked by the providing Participant and it will be handled as if it was Controlled Unclassified Information, or in accordance with its classification, by the receiving Participant.

## 8.8. Patents

- 8.8.1. Where a Participant owns title to a Project Invention, or has the right to receive title to a Project Invention, that Participant will consult with the other Participant regarding the filing of a Patent application for such Project Invention. The Participant which has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Participant with the opportunity to file on behalf of the Participant holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Participant will notify the other Participant of that decision in writing and permit the other Participant to continue the prosecution. If a Participant holding a Patent stops paying maintenance fees or taking other administrative actions required during the term of the Patent, that Participant will notify the other Participant and permit the other Participant to continue with payment of the maintenance fees or other administrative actions.
- 8.8.2. The other Participant will be promptly furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.
- 8.8.3. The other Participant will acquire a non-exclusive, irrevocable, royalty-free license to

practice or have practiced, by or on behalf of the Participant, throughout the world for Defense Purposes, any Project Invention.

- 8.8.4. Each Participant will promptly notify the other Participant in writing of any Patent infringement claims made in its territory arising in the course of work performed under the Project. Insofar as possible, the other Participant will provide information available to it that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other Participant during the handling, and prior to any settlement, of such claims. The Participants will share the costs of resolving Patent infringement claims in the same ratio as that of their shared financial contributions. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the Project of any invention covered by a Patent issued by their respective countries.
- 8.8.5. Patent applications to be filed under this MOU which contain Classified Information will be protected and safeguarded in accordance with the requirements contained in the Agreement between the U.S. and Australia regarding Interchange of Patent Rights and Technical Information for Defense Purposes: Filing of Classified Patent Applications, dated 2 October 1961.

## SECTION IX

### CONTROLLED UNCLASSIFIED INFORMATION

9.1. Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:

- 9.1.1. Such information will be used only for the purposes authorized for use of Project Information as specified in Section VIII (Disclosure and Use of Project Information).
- 9.1.2. Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1., and will be subject to the provisions of Section XII (Third Party Sales and Transfers).
- 9.1.3. Each Participant will take the necessary and appropriate lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2., unless the originating Participant consents to such disclosure in writing. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate written notification will be given to the originating Participant.

9.2. To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings will be defined in the Project Security Instruction.

9.3. Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

## SECTION X

### VISITS TO ESTABLISHMENTS

10.1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants in writing and the employees have any necessary and appropriate security clearances and a need-to-know.

10.2. All visiting personnel will be required to comply with security regulations of the host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

10.3. Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform with the established visit procedures of the host country. Requests for visits will bear the name of the Project.

10.4. Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with recurring international visit procedures.



## SECTION XI

### SECURITY

11.1. All Classified Information provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the Agreement Between the Government of Australia and the Government of the United States of America Concerning Security Measures For the Protection of Classified Information, of November 7, 2002.

11.2. Classified Information will be transferred only through official government-to-government channels or through channels approved by the DSAs of the Participants. Such Classified Information will bear the level of classification, denote the country of origin, the provisions of release, and the fact that the information relates to this MOU.

11.3. Each Participant will take the necessary and appropriate lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by paragraph 11.8., unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

11.3.1. The recipient will not release the Classified Information to any government, national, organization, or other entity of a Third Party except as permitted under the procedures set forth in Section XII (Third Party Sales and Transfers).

11.3.2. The recipient will not use the Classified Information for other than the purposes provided for in this MOU.

11.3.3. The recipient will comply with any distribution and access restrictions on Classified Information that is provided under this MOU.

11.4. The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participant in writing of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

11.5. The PM will prepare a Project Security Instruction and a Classification Guide for the Project. The Project Security Instruction and the Classification Guide will describe the methods by which Project Information and material will be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide will be developed by the PM within three months after this MOU enters into effect. They will be reviewed and forwarded to the Participants' DSAs for approval and will be applicable to all government and Contractor personnel participating in the Project. The Classification Guide will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and the Classification Guide will be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.6. The DSA of the Participant in which a classified Contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractor of any Classified Information received under this MOU, the DSAs will:

- 11.6.1. Ensure that such Contractor, prospective Contractor or subcontractor and their facility(ies) have the capability to protect the Classified Information adequately.
- 11.6.2. Grant a security clearance to the facility(ies), if appropriate.
- 11.6.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.
- 11.6.4. Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and provisions of this MOU.
- 11.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

11.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOU.

11.7. Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participant will be consulted for approval prior to permitting such access.

11.8. For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this MOU. These officials will be responsible for limiting access to Classified Information involved in this MOU to those persons who have been properly approved for access and have a need-to-know.

11.9. Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the Project.

11.10. Information or material provided or generated pursuant to this MOU may be classified as high as SECRET. The existence of this MOU is Unclassified and the contents are Unclassified.

11.11. In order to facilitate the exchange of Classified Information (which can be transmitted electronically) necessary for the execution of the Project, Australian Cooperative Project Personnel (CPP) may be permitted to install, maintain, and use Australian classified information systems (even if they are stand-alone links) in the JPO. Installation, maintenance, and use of this equipment, including loading and storage of any required cryptologic materials, will comply with both U.S. DoD and Australian DoD laws, regulations, and policies. No equipment will be installed, maintained or used without the appropriate permissions having been obtained from the DSA's of both

Participants. All information to be transmitted via this Australian classified information system will be cleared and approved prior to transmission by a JPO representative designated in writing by either the PM or the Project Security Officer.

## SECTION XII

### THIRD PARTY SALES AND TRANSFERS

12.1. The U.S. DoD will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information or jointly acquired Project Equipment or any item produced either wholly or in part from Project Foreground Information to any Third Party without prior consultation with the other Participant through the Steering Committee. Furthermore, the U.S. DoD will not permit any such sale, disclosure, or transfer by others, including by the owner of the item, without prior consultation with the other Participant. The U.S. DoD recognizes that sales, disclosures, or other transfers described in this paragraph will only be made if the government of the intended recipient consents in writing that it will:

12.1.1. Not retransfer, or permit the further retransfer of, any equipment or information provided; and

12.1.2. Use, or permit the use of, the equipment or information provided only for the purposes for which such equipment or information is furnished.

12.2. The Australian DoD will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Project Foreground Information to any Third Party without the prior written consent of the U.S. Government. Furthermore, the Australian DoD will not permit any such sales, disclosure, or transfer by others, including the owner of the item, without the prior written consent of the U.S. Government. The Australian DoD recognizes that sales, disclosures, and other transfers described in this paragraph will not be authorized by the U.S. Government unless the government of the intended recipient consents in writing that it will:

12.2.1. Not retransfer, or permit the further retransfer of, any equipment or information provided; and

12.2.2. Use, or permit the use of, the equipment or information provided only for the purposes for which such equipment or information is furnished.

12.3. A Participant will not sell, transfer title to, disclose, or transfer possession of Project Equipment or

Project Background Information provided by the other Participant to any Third Party without the prior written consent of the government of the Participant which provided such equipment or information. The providing Participant's government will be solely responsible for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers.

12.4. Sales and other transfers of equipment developed or Project Foreground Information generated under this MOU may attract a levy (as determined by the U.S. DoD after consultation between the Participants) to be shared between the Participants. Prior to any such sale or other transfer in which a levy will be imposed, the amounts of such levy will be mutually determined by both Participants consistent with the laws and regulations of each Participant. Either Participant may reduce or waive the assessment of its share of the levy.

## SECTION XIII

### LIABILITY AND CLAIMS

13.1. Claims arising under this MOU will be dealt with under paragraph 1 of the Chapeau Agreement. Any costs to be shared under paragraph 1 b)ii of that Agreement will be shared as follows:

13.1.1. Where one Participant alone is responsible for the injury, death or damage, the costs will be the sole responsibility of that Participant;

13.1.2. Where the Participants are jointly responsible for injury, death or damage, or it is not possible to attribute responsibility for the injury, death or damage, the costs will be shared in accordance with the ratio of the Participants' shared financial contributions.

13.2. The Contracting Participant will not indemnify Contractors against liability for claims by any other persons.

13.3. Any costs as a result of claims arising under any Contract awarded pursuant to section VI (Contractual Arrangements) will be shared in accordance with the ratio of the Participants' shared financial contributions, or as mutually determined by the Participants.

## SECTION XIV

### PARTICIPATION OF ADDITIONAL NATIONS

14.1. It is recognized that other national defense organizations may wish to join the Project.

14.2. Mutual written consent of the Participants will be required to conduct discussions with potential additional Participants. The Participants will discuss the arrangements under which another participant might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information) and Section XII (Third Party Sales and Transfers).

14.3. The Participants will jointly formulate the provisions under which additional participants might join. The addition of new participants to the Project will require amendment of this MOU by the Participants.



## SECTION XV

### CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

15.1. Customs duties, import and export taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under this Project.

15.2. Each Participant will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs.